

SUPERIOR COURT  
BARNSTABLE, SS

FILED OCT 08 2016

*Scott L. Wilson* Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 1672CV467

CHRISTINA STEVENS, TRUSTEE OF  
THE LIGHTHOUSE REALTY TRUST,  
Plaintiff

Vs.

TOWN OF BOURNE ZONING BOARD  
OF APPEALS, JOHN E. O'BRIEN, WADE  
M. KEENE, HAROLD KALICK,  
TIMOTHY M. SAWYER, LEE M. BERGER,  
KATHLEEN BRENNAN a/k/a KAT  
BRENNAN, AMY KULLAR, THOMAS  
C. ARMSTRONG, HEATHER ALDEN,  
AND MICHAEL MCHONE, AS  
THEY CONSTITUTE THE TOWN OF  
BOURNE ZONING BOARD OF  
APPEALS, and JAMES F. MOLLOY,  
Applicant,  
Defendants

COMPLAINT

Parties

1. The Plaintiff, Christina Stevens, Trustee of the Lighthouse Realty Trust ("Stevens"), is the owner of certain real property located at and described as 0 & 1 Lighthouse Lane, Bourne, Massachusetts (the "Property").
2. The Plaintiff is a person/party aggrieved within the meaning of M.G.L. c. 40A, §17 as to the September 7, 2016 decision of the Town of Bourne Zoning Board of Appeals in Petition No. 2016-A17, overturning the Enforcement Order of the Town of Bourne Building Inspector dated June 23, 2016, and substituting therefore the Cease and Desist Order dated January 15, 2013, as to the Property, as shown on Assessor's Map #45, Parcels #14 & #20, in an R-80 Zoning District.



3. Upon information and belief, the Defendant, Town of Bourne, Zoning Board of Appeals is an administrative agency with a usual place of business at Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
4. Upon information and belief, the Defendant, John E. O'Brien of the Bourne Zoning Board of Appeals, is an individual residing at 3 Oak Ridge Drive, Unit 12A, Pocasset, Massachusetts 02559. Further, upon information and belief, the Defendant, John E. O'Brien, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
5. Upon information and belief, the Defendant, Wade M. Keene of the Bourne Zoning Board of Appeals, is an individual residing at 19 Vickerson Avenue, Sagamore Beach, Massachusetts 02562. Further, upon information and belief, the Defendant, Wade M. Keene, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
6. Upon information and belief, the Defendant, Harold Kalick of the Bourne Zoning Board of Appeals, is an individual residing at 62 Squeteague Harbor Road, Bourne, Massachusetts 02532. Further, upon information and belief, the Defendant, Harold Kalick, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
7. Upon information and belief, the Defendant, Timothy M. Sawyer of the Bourne Zoning Board of Appeals, is an individual residing at 11 Seabreeze Drive, Buzzards Bay, Massachusetts 02532. Further, upon information and belief, the Defendant, Timothy M. Sawyer, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
8. Upon information and belief, the Defendant, Lee M. Berger of the Bourne Zoning Board of Appeals, is an individual residing at 14 Everett Road, Buzzards Bay, Massachusetts 02532. Further, upon information and belief, the Defendant, Lee M. Berger, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
9. Upon information and belief, the Defendant, Kathleen Brennan, a/k/a Kat Brennan, of the Bourne Zoning Board of Appeals, is an individual residing at 45 Oak Avenue, Bourne, Massachusetts 02534. Upon information and belief, the Defendant, Kathleen Brennan, may also have a mailing address of PO Box 317, Cataumet, Massachusetts 02534. Further, upon information and belief, the Defendant, Kathleen Brennan a/k/a Kat Brennan, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.



10. Upon information and belief, the Defendant, Amy Kullar of the Bourne Zoning Board of Appeals, is an individual residing at 19 Shore Road, Buzzards Bay, Massachusetts 02532. Further, upon information and belief, the Defendant, Amy Kullar, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
11. Upon information and belief, the Defendant, Thomas C. Armstrong of the Bourne Zoning Board of Appeals, is an individual residing at 749 Head of the Bay Road, Unit 18F, Buzzards Bay, Massachusetts 02532. Further, upon information and belief, the Defendant, Thomas C. Armstrong, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
12. Upon information and belief, the Defendant, Heather Alden of the Bourne Zoning Board of Appeals, is an individual residing at 12 Shearwater Drive, Cataumet, Massachusetts 02534. Upon information and belief, the Defendant, Heather Alden, may also have a mailing address of PO Box 339, Cataumet, Massachusetts 02534. Further, upon information and belief, the Defendant, Heather Alden, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
13. Upon information and belief, the Defendant, Michael McHone of the Bourne Zoning Board of Appeals, is an individual residing at 247 Main Street, Apt. A, Bourne, Massachusetts 02532. Further, upon information and belief, the Defendant, Michael McHone, may also have an address of c/o Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.
14. Upon information and belief, the Defendant, James M. Molloy, Applicant in the Zoning Board of Appeals matter affecting the Plaintiff's premises, Petition No. 2016-A17, is an individual residing at 16 Tabor Place, Brookline, Massachusetts 02445.

#### Facts

15. This action is being brought pursuant to the provisions M.G.L. c. 40A, §17.
16. This Honorable Court has concurrent and original jurisdiction for this action pursuant to the provisions of M.G.L. c. 40A, §17.
17. By a decision filed with the Clerk for the Town of Bourne on September 14, 2016, the Town of Bourne Zoning Board of Appeals voted to grant the Defendant, James F. Molloy's appeal of the decision of the Building Inspector for the Town of Bourne, overturning the Enforcement Order dated June 23, 2016, and substituting therefore the cease and desist order dated January 15, 2013, as to the subject property located at 0 & 1 Lighthouse Lane, Bourne, Massachusetts, as shown on Assessor's Map #45, Parcels #14 & #20. A certified copy of said decision is attached hereto as Exhibit "A".



18. The Plaintiff now appeals from said decision as violative of Massachusetts zoning law because the decision granting the appeal of the Defendant, James F. Molloy, was arbitrary and capricious and exceeds the power of the Zoning Board of Appeals, and because the subsidiary findings and the evidence presented at the hearing before the Zoning Board of Appeals did not support the granting of the relief requested.
19. Further, the Plaintiff also appeals from said decision as it was in error and exceeds the authority of the Zoning Board of Appeals because the Plaintiff previously entered into an agreement, dated on or about June 2, 2016, with the Town of Bourne, acting by and through its Board of Selectmen, in settlement of an action which had been commenced by the Town of Bourne against the Plaintiff in the Massachusetts Land Court (Civil Action No. 15MISC000232). A copy of said agreement is attached hereto as Exhibit "B". Said action sought the issuance by the Land Court of a declaratory judgment declaring that the Plaintiff was prohibited by the zoning by-law from renting the property at 0 & 1 Lighthouse Lane, Bourne, Massachusetts, and using the same for functions and/or receptions, including wedding receptions. The Plaintiff denied the allegations of the Town of Bourne and further denied that the Town of Bourne was entitled to such a declaratory judgment.
20. As a binding resolution of that matter, said agreement was entered into by the Town of Bourne after a public meeting and hearing before the Board of Selectmen was held to consider and approve that agreement. Upon information and belief, the Applicant, the Defendant, James M. Molloy, as well as other neighbors in opposition, were present at said public hearing, were represented by counsel, and were heard at that time.
21. The Plaintiff also appeals from said decision as the Plaintiff is not renting the subject Property for functions and/or receptions. Rather, the Plaintiff rents the subject Property as specifically authorized by the terms of the Town of Bourne Zoning By-Law and said settlement agreement (Exhibit B).
22. Further, the Plaintiff appeals said decision inasmuch as the complained of usage of the Property constitutes an accessory and permitted use.
23. Further, the Plaintiff submits that, per the settlement agreement, the previously pending Land Court action was dismissed, with prejudice (Exhibit B, paragraph 9). A copy of the Stipulation of Dismissal, with prejudice, filed by the Town of Bourne with the Land Court is attached hereto as Exhibit "C". As the instant matter concerns the same parties and issues, the Plaintiff submits that the principles of res judicata and collateral estoppel apply, entitling the Plaintiff to the relief which she seeks, herein.



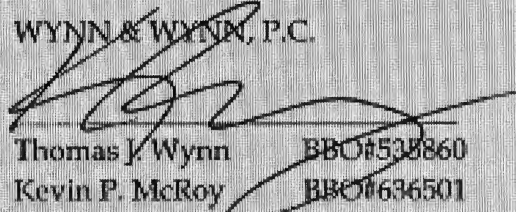
WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter the following relief:

- A. Enter a Judgment that the Town of Bourne Zoning Board of Appeals decision in Petition No. 2016-A17, filed with the Clerk for the Town of Bourne on September 14, 2016, exceeded the authority of the Board of Appeals and was otherwise made in error;
- B. That the decision of the Town Bourne Zoning Board of Appeals be annulled;
- C. That the Town of Bourne Zoning Board of Appeals issue an Order reversing the subject decision of the Town of Bourne Zoning Board of Appeals; and
- D. That the Court grant such other and further relief as may be just and equitable.

Respectfully submitted,  
For the Plaintiff,

CHRISTINA STEVENS, TRUSTEE  
OF LIGHTHOUSE REALTY TRUST  
By her attorneys,

WYNN & WYNN, P.C.

  
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**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
24 PERRY AVENUE  
BUZZARDS BAY, MA  
TEL. 508-759-0615  
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## **APPEAL OF THE DECISION OF THE BUILDING INSPECTOR FINAL DECISION**

**PETITION NUMBER:** 2016-A17  
**NAME OF APPLICANT:** JAMES F. MOLLOY  
**PROPERTY ADDRESS:** 0&1 LIGHTHOUSE LANE, POCASSET, MA  
**REGISTRY OF DEEDS TITLE REFERENCE:** BOOK #17933, PAGE #320  
**TOWN MAP: #45 PARCELS: #14 & #20**

On September 7, 2016, the Board of Appeals voted to grant the above entitled appeal of the decision of the Building Inspector, overturning the enforcement order dated June 23, 2016, and substituting therefor the cease and desist order dated January 15, 2013, in accordance with Massachusetts General Laws Chapter 40A, Section 8, and Section 1320 of the Bourne Zoning Bylaws, for the property located at 0 & 1 Lighthouse Lane, as shown on assessor's map #45, parcels #14 & #20, in an R-80 zoning district.

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to grant the appeal of the decision of the Building Inspector dated June 23, 2016, and that a copy of said decision, and all plans referred to in the decision, have been filed with the Town Clerk.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as provided in M.G.L. Chapter 40A, Section 17, and by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision.

Lee M. Berger, Chairman  
Board of Appeals

**A TRUE COPY:**  
**ATTEST:**

  
TOWN CLERK

EXHIBIT

A



## DECISION

### Facts of the Case

The subject property is located at the water's edge of a peninsula known as Wings Neck, and is surrounded by approximately 14 residential homes, all located in an R-80 zoning district. While new homes in an R-80 zoning district require 80,000 square foot lots, all of the lots in this area, including the locus, are significantly smaller, grandfathered lots.

The Owner of 0 & 1 Lighthouse Lane, Christine Stevens, Trustee of Lighthouse Realty Trust (hereinafter the "Owner"), rents the subject property on a short term basis (weekly or less) and advertises on the internet that the property is available as a venue for weddings and other functions. Numerous weddings and wedding receptions have been conducted over the past years at the property. These functions have caused substantial disruption to the quiet enjoyment of the abutters and other residences along the road leading to the water's edge as a result of traffic, noise, garbage and trespass.

On January 15, 2013, the Building Inspector sent a letter to the Owner stating, in relevant part, that "it is a VIOLATION of the Zoning Bylaws to use that property for weddings and or wedding receptions. This letter will constitute both a warning to you and my decision as Zoning Enforcement Officer. Please be advised that this decision may be appealed to the Zoning Board of Appeals pursuant to Chapter 40A M.G.L."

The Owner did not appeal, but rather ignored the letter and continued to rent the premises for large weddings and wedding receptions. In response to her continued refusal to comply with the letter, the Selectmen of the Town of Bourne (hereinafter the Selectmen") filed a Declaratory Judgment action in the Land Court. Abutters attempted to intervene in the Land Court case, but their motion was denied. On June 2, 2016, the Selectmen entered into an "Agreement" with the Owner of the locus, which became the Land Court Judgment. Said Agreement contained the following conditions: the Owner was allowed to hold no more than four (4) functions per year, with one function per



month occurring in the months of May, June, September, and October of each year; said functions would be limited to 100 or fewer guests; the Owner was required to clean the area after each function; entertainment, such as music, was required to be shut down after 10 p.m.; all function guests were prohibited from using the private beach; a detailed police officer was required for any function that exceeds fifty (50) guests; and other restrictions not herein relevant.

The Agreement specifically states that the Agreement "does not preclude the Town from prospectively enforcing its Zoning By-Laws in accordance with its provisions." It also states "Bourne agrees to dismiss the Massachusetts Land Court Civil Action No. MISC 000232, with prejudice." It also states "Bourne agrees to vacate the current Cease and Desist Order on the Property and to substitute in its place a Cease and Desist Order that reflects the terms of this Agreement." It also states "The parties hereto understand and acknowledge that this Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. Further this agreement is deemed to be made in the Commonwealth of Massachusetts and it and the legal relations between the parties hereto shall be governed and construed according to the Laws of the Commonwealth of Massachusetts."

After the Agreement was signed by the Selectmen and the Owner of the locus, the Building Inspector sent a letter to the Owner of the locus dated June 23, 2016, stating in relevant part: "Pursuant to an Agreement entered on June 2, 2016, by and between the Town of Bourne and Christine Stevens, Trustee of 'The Lighthouse Realty Trust' and approved by the Massachusetts Land Court, I, Roger Laporte, Zoning Enforcement Officer, hereby vacate the current CEASE and DESIST order, and substitute in its place this ORDER that reflects the term of the Agreement." The rest of the June 23, 2016, letter restates the terms of the Agreement. The end of that letter states "This decision may be appealed pursuant to Chapter 40A M.G.L."



On July 8, 2016, James F. Molloy, an abutter to the locus, appealed the decision of the Building Inspector dated June 23, 2016. At the hearing before the Board of Appeals, numerous other abutters came to support Mr. Molloy, and at least four (4) other abutters testified. Neither the Owner of the locus nor any representative on her behalf was present. Also, none of the Selectmen nor anyone on their behalf was present.

### Discussion

The primary question before the Board of Appeals is whether renting premises in a residential zone for large wedding functions is an "accessory use" permitted by the Bourne Zoning Bylaws.

"By statute, '[t]he responsibility for enforcing zoning ordinances or by-laws lies with the municipality and is assigned by statute to the building inspector or other specified municipal officers. *McDonald's Corp. v. Seekonk*, 12 Mass. App. 351, 353 (1981). Under Bourne's Zoning Bylaw, Section 1210, the Building Inspector is the "Chief Zoning Enforcement Officer" in the Town of Bourne. Once the Building Inspector makes a decision, any aggrieved party has the right to appeal said decision to the Board of Appeals within thirty (30) days of the decision, in accordance with MGL chapter 40A, section 8.

Commercial uses, including commercial recreation, are specifically prohibited in an R-80 zoning district. Property in an R-80 zoning district is limited to residential use, or accessory uses, some of which are listed in the Town of Bourne bylaws (such as home occupations or by special permit accessory dwellings which serve significant community purposes such as caring for the elderly or providing affordable housing, and a roadside stand for sale of produce largely raised on the premises). "Other customary accessory uses" are also permitted in an R-80 zoning district. (See Section 2220 of the bylaws). "Accessory uses" are defined in the definition section of the bylaws as follows: "a use customarily incidental to, and on the same lot as, a principal use and occupying less than 30% of the habitable floor area on the premises and less than 50% of the lot area."



The enumeration of uses allowed in a residential district is sufficient to prohibit other uses. *Town of Brookline v. Co-Ray Realty Company, Inc.*, 326 Mass. 206, 212 (1950), and cases cited therein. Indeed, "It is a 'familiar principle of interpretation that express mention of one matter excludes by implication other similar matters not mentioned.'" *Foster v. Mayor of Beverly*, 515 Mass. 567, 569 (1944).

For example, in *Town of Brookline v. Co-Ray Realty Company, Inc.*, *supra*, it was held that land in a single residential district could not be used as a rear yard for an apartment house.

Another example, in *Building Inspector of Chelmsford v. Belleville*, 342 Mass. 216, 217-218 (1961), it was held that "[t]he enumeration of permitted uses in a Single Residence A-1 District which does not include the storing or garaging of heavy equipment suffices to show that such use is not authorized in a Single Residence A-1 District in Chelmsford."

Another example, in *Richardson v. Zoning Board of Appeals of Framingham*, 351 Mass. 375, 380 (1966), it was held that a private access road in a single residential district was not permitted to serve an apartment house parking lot.

Another example, in *Harrison v. Building Inspector of Braintree*, 350 Mass. 559, 561 (1966), it was held that the use of land in a residential district for access roadways for an adjacent industrial plant violates the residential requirement.

Thus, both by expressly prohibiting commercial activity, and by expressly allowing residential activity, the Town of Bourne Bylaws prohibits, as of right, any auxiliary commercial enterprises in a residential district that are not specifically stated to be allowed.

As stated above, the primary question before the Board is whether renting premises in a residential zone for large wedding functions is an "accessory use" permitted by the Bourne Zoning Bylaws.



The basis of the Building Inspector's January 15, 2013 decision that holding commercial weddings in a residential zone was not an accessory use was the case of *DiGiovanni v. Town of Truro Board of Appeals*, Barnstable Land Court MISC 08-380468 (2012).

An accessory use is a use incidental to the primary use of the property. An accessory use is subordinate to the primary use, and is said to be attendant or concomitant. *Henry v. Board of Appeals of Dunstable*, 418 Mass. 841, 844-45 (1994). Generally, an accessory use must be both incidental and customary. *Simmons v. Zoning Board of Appeals of Newburyport*, 60 Mass. App. Ct. 5, 8 (2003). Determining whether the use is incidental is a fact-dependent inquiry that looks to the effect of the incidental use on the primary use and the reasonableness of the relationship between the incidental and primary uses. *Henry*, 418 Mass. At 844. See also *Gallagher v. Board of Appeals of Acton*, 44 Mass. App. Ct. 906 (1997) (discussing case law surrounding the terms accessory and incidental use). Whether Plaintiffs use of this property is an accessory use also depends in part on the frequency and intensity of the challenged use. For a use to remain accessory it must be subordinate and minor in significance and at a certain point, the frequency of the use transforms an accessory use into a primary use. *Garabedian v. Westland*, 36 Mass. 432, 438 (1971). Activity of a certain magnitude is no longer incidental. *Garabedian* 59 Mass. App. Ct. at 436. See also *Henry*, 418 Mass. 841 (1994) (holding the use was not accessory based on the volume of earth removed, the duration of the project, and the scope of the project).

While a local zoning law may grant great indulgence to a use by expressly conferring upon it status as accessory, when the local bylaw does not specify what types of accessory uses are permitted, courts general look to what uses are customary. *Simmons v. Zoning Board of Appeals of Newburyport*, 60 Mass. App. Ct. 5, 8 (2003). In considering what is customary, factors include (1) the size of the lot; (2) the nature of the primary use; (3) the use of the surrounding properties; and (4) the economic structure of the surrounding area. *Simmons*, 60 Mass. App. Ct. at 9 (quoting *Lawrence v. Zoning Board of Appeals of North Branford*, 158 Conn. 509, 512-513 (1969)).

*DiGiovanni v. Town of Truro Board of Appeals*, Barnstable Land Court MISC 08-380468 (2012).



While the *DiGiovanni* case held that more than 5 wedding per year constituted a commercial use and not an accessory use under the Truro bylaws, the Bourne Board of Appeals finds that any rental where the primary purpose is a wedding venue is a commercial use and not an accessory use and is thereby prohibited by the Bourne bylaws.

Commercial recreation is specifically prohibited in an R-80 district. (See section 2220.) Renting the premises for large functions that involve entertainment and alcohol certainly constitute "commercial recreation."

When premises are advertised as a wedding venue and rented for one week or less in order to hold a large wedding on the premises during that week, the primary use of the premises is for the wedding, and the residential purpose of the rental of the dwelling becomes the accessory or incidental use.

The effect of this decision on the Agreement and the Judgment of the Land Court is another question, and one the Board of Appeals cannot decide, but chooses to comment upon. MGL chapter 40A, section 5, provides for the manner in which zoning bylaws are established. The manner in which the Selectmen agreed to a change of use for the locus is not set forth in section 5; and since no public hearing was held by the Planning Board as required by section 5, and no action was taken by Town Meeting as required by section 5, the action of the Selectmen was ineffective to change zoning.

Only Town Meeting can change or add a use allowed in a residential district. Neither the Selectmen nor the Board of Appeals can grant use variances. (See section 1320 of the bylaws.)

Indeed, such a change in zoning affecting only this particular locus would be considered spot zoning, in violation of State law, even if the change had been voted at Town Meeting. "Spot zoning occurs when there is a 'singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, all for the economic benefit of the owner of that lot.' *Whittemore v. Building Inspector of Falmouth*, 313 Mass. 248, 249 (1943). See *Board of Appeals of Hanover v. Housing Appeals Comm.*, 363 Mass. 339, 361-362 (1973). Such zoning 'constitutes a denial of equal protection under the law guaranteed by the State and Federal



Constitutions," *Id.* at 362 n. 15, and violates the 'uniformity' requirement of c. 40A, s. 4.... See also Bobrowski, Massachusetts Land Use and Planning Law s. 3.4.3 (1993)." *Rando v. Town of North Attleboro*, 44 Mass. App. Ct. 603, 606 (1998).

While the Agreement does not prevent the Town from enforcing its bylaws, the Agreement also states that "the terms of this Agreement are contractual and not a mere recital." Whether this enforcement power and the contractual obligations are in conflict is unclear. What is clear, however, is that the abutters did not have an opportunity to intervene in the Land Court action and the abutters were not parties to the Agreement. Thus, the abutters have rights as aggrieved parties under MGL chapter 40A, section 8, and they have timely appealed the most recent decision of the Building Inspector to the Board of Appeals. The Board of Appeals has by this decision affirmed the rights of the abutters to the quiet enjoyment of their premises and the protections to which they are entitled in a residential district.

#### The Motion and The Vote

After hearing and due deliberation: On motion made by John O'Brien and seconded by Harold Kalick, it was voted to grant the appeal and overturn the decision of the Building Inspector dated June 23, 2016, and to substitute the Cease and Desist Order of January 15, 2013, for the property located at 0 & 1 Lighthouse Lane.

Voting in Favor of the Motion: John O'Brien, Wade Keene, Harold Kalick,  
Tim Sawyer, and Lee Berger

Voting against the Motion: no one

Associate Members present but not voting: Kat Brennan and Amy Kullar

Respectfully submitted,



Lee M. Berger, Chairman  
Board of Appeals



## AGREEMENT

This AGREEMENT, entered into this 2 day of June, 2016 by and between the Town of Bourne (hereinafter "Bourne") and Christina Stevens, TRUSTEE OF THE LIGHTHOUSE REALTY TRUST (hereinafter Stevens).

WHEREAS, Bourne commenced litigation in the Massachusetts Land Court Civil Action No. MISC 000232 against Stevens requesting the court issue a declaratory judgment declaring that Stevens is prohibited by the Zoning By-Law from renting the property at 0 & 1 Lighthouse Lane, Wings Neck, Bourne (hereinafter "Property" or "Premises"), for functions and/or receptions including wedding receptions;

WHEREAS, Stevens denies that her use of the Premises is in violation of the Bourne Zoning By-Laws.

NOW THEREFORE to resolve their differences regarding this matter, Bourne and Stevens agree to the following which does not preclude the Town from prospectively enforcing its Zoning By-Laws in accordance with its provisions:

1. A "function" shall be an event in excess of twenty-five (25) guests hosted by a renter of the premise; a "renter" shall be an individual or individuals occupying the Property pursuant to a written rental agreement.
2. Stevens agrees to limit the number of functions on the Property to four (4) functions per year: one per month for the months of May, June, September and October and to limit the number of guests to one hundred (100).
3. Stevens agrees to require any renter of the Property who holds a function to clean the area following the function; should any renter fail to do so, Stevens will insure the Premises is free from debris after a function.
4. Stevens agrees to discuss with any renters prior to a function to establish the property lines to which the guests are to remain during functions;
5. Stevens agrees to require entertainment at renters' functions to be shut down at 10:00 p.m.;
6. Stevens agrees to require that guests of any function be prohibited from using the beach; however, any renter shall be permitted to use the beach on any day during his/her rental.
7. Stevens agrees to require a detailed police officer for any function that exceeds fifty (50) guests and further agrees to instruct the hired detail police officer as to the parameters that the guests are allowed to visit during the function, where cars are to be parked, and also to make clear that the beach is off limits for guests during functions.
8. Stevens agrees to notify the Town Administrator in writing thirty days in advance of





any function which will exceed fifty (50) guests.

9. Bourne agrees to dismiss the Massachusetts Land Court Civil Action No. MISC 000232, with prejudices;
10. Bourne agrees to vacate the current Cease and Desist Order on the Property and to substitute in its place a Cease and Desist Order that reflects the terms of this Agreement.
11. The parties hereto understand and acknowledge that this Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. Further this Agreement is deemed to be made in the Commonwealth of Massachusetts and it and the legal relations between the parties hereto shall be governed and construed according to the Laws of the Commonwealth of Massachusetts.

BOARD OF SELECTMEN TOWN OF BOURNE

  
Stephen F. Mealy


  
Peter J. Meier

  
Donald J. Pickard

  
George G. Slade

  
Michael A. Blanton

Town of Bourne by its attorney

  
Robert S. Troy  
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90 Route 6A  
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(508) 888-5700  
[rst@troywallassociates.com](mailto:rst@troywallassociates.com)

Dated June 2, 2016





Christina Stevens, TRUSTEE OF THE LIGHTHOUSE REALTY TRUST

Christina Stevens, TRUSTEE OF THE LIGHTHOUSE REALTY TRUST  
by her Attorney



Dina M. Swanson

BBO#654540

Wynn & Wynn P.C.

90 New State Highway

Raynham, MA 02767

(508)823-4567

Dated May 27, 2016



COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

LAND COURT MISC. NO. 000232

TOWN OF BOURNE,  
Plaintiff


v.

CHRISTINA STEVENS, TRUSTEE OF  
THE LIGHTHOUSE REALTY TRUST,  
Defendant.

STIPULATION OF DISMISSAL

The parties to the above-entitled action, pursuant to the provisions of Massachusetts Rules of Civil Procedure 41 (a) (1) (ii), hereby stipulate that said action be dismissed with prejudice, without costs, expenses or attorney's fees to either party. All parties waive any right of appeal.

Plaintiff, by its attorney

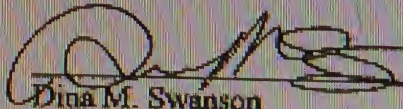
  
Robert S. Troy  
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Troy Wall Associates  
90 Route 6A  
Sandwich, MA 02563  
(508) 888-5700  
[rst@troywallassociates.com](mailto:rst@troywallassociates.com)

Dated June 7, 2016





Defendant, by her Attorney

A handwritten signature in black ink, appearing to read 'Dina M. Swanson', is written over a horizontal line.

Dina M. Swanson

BBO#654540

Wynn & Wynn

90 New State Highway

Raynham, MA 02767

(508)823-4567